

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-827

February 4, 2004

Appeal of Consumer Assistance  
Division Decision #2003-15606  
Regarding Brewer Water  
Department

ORDER

---

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

---

**I. Summary**

In this Order we uphold the November 7, 2003 decision of the Consumer Assistance Division (CAD) concerning a dispute between the Brewer Water Department (Department) and its customer Katherine Dowling.

**II. BACKGROUND**

On August 7, 2003, Ms. Dowling contacted CAD about a high bill dispute she was unable to resolve with the Brewer Water Department. Ms. Dowling complained about high usage to the Department in June 2003 and requested a meter test. On June 9, 2003, the Department tested the meter in Ms. Dowling's presence and found that it read 3.5% high under high flow conditions. The meter technician then halted the test and said she needed a new meter. The meter technician performed no test at low and medium flows as required by Chapter 65 of The Commission's Rules.

The Department then reduced Ms. Dowling's June bill for water and sewage by 16% (or a total of \$67.44). It also did not bill her for water used between May 14 and June 9. The new meter was read in August for the period covering June 10 through August 11 and indicated 1700 cubic feet of usage. The Department refused to make any further adjustments, noting that it had previously documented leaks in pipes and toilets and usage had generally been consistent over the years.

After reviewing all the information, CAD found that the Department had originally installed the meter in 1984, but had no records that it had ever tested the meter after that time. Chapter 65 requires 5/8 inch meters to be tested at least every eight years. It also found that the Department had failed to properly test the meter at low and medium flows. It directed the Department to adjust Ms. Dowling's bills going back six years, the maximum number of years allowed under 35-A M.R.S.A. §1308, by reducing all usage during that period by 3.5%. This resulted in a refund of an additional \$125.16. The Department agreed to notify the Sewer Department about the adjustment.

On November 14, 2003, Ms. Dowling appealed CAD's decision to the Commission. She believes a 3.5% adjustment is inadequate and that she has been

over charged 30% over the past nineteen years, due to a defective meter.<sup>1</sup> Although she recognizes that 35-A M.R.S.A. § 1308 only allows the Commission to make adjustments for up to six years when a customer has been incorrectly charged, she argues the Commission should go back nineteen years because the Department was negligent in not responding to her complaints and in failing to test the meter every eight years as required by Chapter 65 of the Rules.

### III. DECISION

We find that CAD's resolution of this matter was reasonable. Chapter 62(3)(H) of the Commission's rules address rate adjustment procedures for inaccurate meters. Specifically it provides:

- H. Rate Adjustments.
  - i. For purposes of computing rate adjustments, the accuracy of a meter in service shall be determined by adding the intermediate and maximum flow error and dividing this amount by two.
  - ii. Adjustment. If a meter error as determined under section (H)(i) is greater than 10%, the water company shall estimate the customer's water consumption for the applicable portion of the current billing period and the most recent full billing period based on that customer's average consumption, adjusted for known charges. The rate charged to the customer shall be computed according to this estimate. The water company shall refund to the customer any excess amount paid and may recover any deficiency from the customer.

If meter error as computed under Section (H)(i) is determined to be from 2% to 10%, a proportional adjustment shall be made in the rate charged to the customer for the applicable portion of the current billing period and the most recent full billing period. The water company shall refund to the customer any excess amount paid and may recover any deficiency from the customer.

Under this provision, the Commission requires a water utility to go back no further than the last previous full billing period to make an adjustment. In this instance, because the utility had not changed the meter since 1984 nor tested the meter for over eight years, it was reasonable for the CAD to order an adjustment going back six years, the maximum allowed in 35-A M.R.S.A. §1308 ("The Commission may not order a rebate for a utility error of excessive charge that antedates the order for more than six

---

<sup>1</sup> Throughout her appeal Ms. Dowling refers to the meter as a "pump". We believe she is referring to the meter and have not addressed separately any issues relating to a "pump."

years"). CAD directed the Department to reduce billed usage for the last 6 years by 3.5%. This was based on the meter testing 3.5% high at high flows.<sup>2</sup>

Ms. Dowling believes that her meter has been overreading by 30% for the past nineteen years. It is impossible to make that determination at this time. The residence often had tenants so it is impossible to know how much water they used. This also could account for variations in water usage over the years. By statute we are limited to six years when providing reparation or adjustments. CAD used the only known estimate of overusage, 3.5%, to establish a rebate of \$125.16.<sup>3</sup> Now that a new meter has been installed, Ms. Dowling should immediately contact the Department if she believes the meter is not operating properly and the Department should offer to test the meter on request. We remind the Department that all testing should be consistent with the requirements Chapter 62.

Dated at Augusta, Maine this 4th day of February , 2004

BY ORDER OF THE COMMISSION

---

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

---

<sup>2</sup> The CAD decision states on Page 2 that when the Department read the new meter in August 2003 the readings indicated a decrease in water consumption of 3.5%. This is incorrect and we do not rely on that finding in reaching our decision.

<sup>3</sup> We note that if CAD had used Chapter 62 (H) (ii) rate adjustment provision and made a 30% adjustment to the previous billing period, Ms. Dowling would have received a smaller rebate than that provided in CAD's decision.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.